



CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	09-18-07	AGENDA REQUEST NO:	III K
INITIATED BY:	KEISHA E. SEALS, ENGINEER II <i>KES</i>	RESPONSIBLE DEPARTMENT:	ENGINEERING
PRESENTED BY:	PATRICK WALSH, P.E. ASSISTANT CITY ENGINEER	DEPARTMENT HEAD:	CHRISTOPHER L. STEUBING, P.E., CITY ENGINEER <i>CS</i>
		ADDITIONAL DEPARTMENT HEAD (S):	N/A
SUBJECT / PROCEEDING:	U.S. HIGHWAY 59 PHASE III: ORNAMENTAL TRAFFIC SIGNALS AGREEMENT CONSIDERATION AND ACTION		
EXHIBITS:	ADVANCED FUNDING AGREEMENT (AFA) RESOLUTION NO. 07-30		
CLEARANCES		APPROVAL	
LEGAL:	MEREDITH WILGANOWSKI, <i>MW</i> ASSISTANT CITY ATTORNEY	EXECUTIVE DIRECTOR:	JIM CALLAWAY <i>Jim Callaway</i> COMMUNITY DEVELOPMENT
PURCHASING:	N/A	ASST. CITY MANAGER:	N/A
BUDGET:	JENNIFER BROWN <i>JB</i> ASSISTANT FISCAL SERVICES DIRECTOR	CITY MANAGER:	ALLEN BOGARD <i>Allen Bogard</i>
BUDGET			
EXPENDITURE REQUIRED: \$		N/A	
AMOUNT BUDGETED/REALLOCATION: \$		N/A	
ADDITIONAL APPROPRIATION: \$		N/A	
RECOMMENDED ACTION			
The Engineering Department recommends approval of the attached resolution and agreement with TxDOT wherein the City agrees to provide ornamental traffic signal poles for the TxDOT U.S. Highway 59 interchange at State Highway 99 (Grand Parkway) Project. This is consistent with the authorization for payment for the purchase of the poles from a vendor that is also on this evening's Council agenda.			

EXECUTIVE SUMMARY

Consistent with the funding in the approved FY 2004 Capital Improvement Program (CIP) and the City's Urban Beautification Policy, as well as previously completed State roadway expansions at U.S. Highway 59 and Eldridge Road (F.M. 1876), the current projects of S.H. 6/U.S. Highway 90A Overpass and U.S. Highway 90A Widening, the City has been working with TxDOT to incorporate ornamental traffic signal poles for the signalized intersection at U.S. Highway 59 and State Highway 99 (Grand Parkway).

The City must enter into an agreement with TxDOT to provide the ornamental traffic signal poles of the City's choice to the contractor. The proposed ornamental traffic signal poles are consistent in appearance with those used in the previous and current State projects, including fluted shape, black, powder coating, and "acorn" shaped luminaries.

The subject agreement stipulates that TxDOT will reimburse the City for the cost of the standard traffic signal poles upon completion of the U.S. Highway 59 Project. This agreement does commit the City to purchasing the ornamental poles at a cost of \$187,203.00. Therefore, the net cost to the City will be \$187,203.00 for the ornamental cost less \$117,116.00 for the standard cost which amounts to the City's cost of \$70,087.00. This amount is based upon a recent cost estimate from a supplier.

Due to the rising cost of steel, the quote price is available to the City through October only. As a result, this evening, staff is also requesting, via a separate agenda item, that Council authorize payment for these poles from the selected vendor. This authorization, once approved by Council, will ensure the City will receive the quoted price.

Sufficient unencumbered funds for the ornamental traffic signal poles were budgeted in the approved FY 2004 CIP budget. These unencumbered funds are available in CIP No. ST0508 with a remaining balance of \$784,377.10.

The Engineering Department recommends approval of Resolution No. 07-30 authorizing the attached agreement with TxDOT for furnishing of ornamental traffic signal poles for the U.S. Highway 59/S.H. 99 (Grand Parkway) project, where TxDOT agrees to reimburse the City \$117,116.00 for the standard pole cost upon completion of the project.

EXHIBITS

RESOLUTION NO. 07-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS, PROVIDING FOR THE APPROVAL OF THE AGREEMENT DATED _____ BETWEEN THE STATE OF TEXAS AND THE CITY OF SUGAR LAND, FOR THE INSTALLATION, CONSTRUCTION, EXISTENCE, USE, OPERATION AND MAINTENANCE OF CERTAIN TRAFFIC SIGNALS AND RELATED EQUIPMENT TO IMPROVE TRAFFIC PROGRESSION AND PEDESTRIAN SAFETY AT THE LOCATION(S) SHOWN ON THE AGREEMENT, ATTACHED HERETO AND MADE A PART HEREOF, IN THE CITY OF SUGAR LAND, AND PROVIDING FOR THE EXECUTION OF SAID AGREEMENT.

**BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF SUGAR LAND, TEXAS:**

Section 1. That the certain Agreement dated _____, between the State of Texas and the City of Sugar Land, for the installation, construction, existence, use, operation, and maintenance of certain traffic signals and related equipment to improve traffic progression and pedestrian safety at the location(s) shown on Exhibit 1, attached hereto and made a part thereof, in the City of Sugar Land, be and the same is hereby approved, and the City Manager is hereby authorized to execute said agreement on behalf of the City of Sugar Land, and to transmit the same to the State of Texas for appropriate action.

APPROVED on _____, 2007.

David G. Wallace, Mayor

ATTEST:

Reviewed for Legal Compliance

Meredith Wilganski

Glenda Gundermann, City Secretary

Attachment: Exhibit 1

EXHIBIT 1

US 59 at SH 99

**AGREEMENT FOR THE FURNISHING OF
TRAFFIC SIGNAL EQUIPMENT BY A MUNICIPALITY**

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State," and the City of Sugar Land, Fort Bend County, Texas, hereinafter called the "City," acting by and through its duly authorized officers as evidenced by Resolution/Ordinance No. _____, hereinafter acknowledged by reference.

WITNESSETH

WHEREAS, the State owns and maintains a system of highways and roadways, including US 90A and SH 6 in the City of Sugar Land; and

WHEREAS, the City has requested the State to reimburse the cost of furnishing ornamental signal poles at the intersection(s) of US 59 at SH 99 hereinafter called the "Project," and

WHEREAS, the State and City wish to cooperate in the construction of this Project; and

WHEREAS, the City desires that equipment be provided that is compatible with standard signal operation and/or existing City equipment; and

WHEREAS, it is in the best interest of the City and the State for the City to assist the State by furnishing ornamental signal poles on the Project; and

WHEREAS, on this 25 day of January, 2001, the Texas Transportation Commission passed Minute Order No. 108410, approving the Project (0027-12-121); and

WHEREAS, on this 18 day of November, 2004, the Texas Transportation Commission passed Minute Order No. 109862, approving the Project (0027-12-121); and

WHEREAS, on this 27 day of October, 2005, the Texas Transportation Commission passed Minute Order No. 110266, approving the Project (0027-12-121); and

WHEREAS, on this 25 day of May, 2006, the Texas Transportation Commission passed Minute Order No. 109862, approving the Project (0027-12-121); and

WHEREAS, the Project has been designated as a federal-aid project and thus this agreement shall be made in accordance with Federal Highway Administration (FHWA) procedures and regulations; and

WHEREAS, the State is authorized to enter into an agreement with the City for the Project pursuant to Transportation Code, §221.002;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

Article 1. CONTRACT PERIOD

This agreement becomes effective on final execution by the State and shall remain in effect as long as said traffic signal equipment is in operation at the described location and the signal project is incomplete, or unless otherwise terminated or modified as hereinafter provided.

Article 2. CONSTRUCTION RESPONSIBILITIES

- A. For all items of construction other than furnishing the ornamental traffic signal poles, the State will prepare the construction plans, advertise for bids, and let the construction contract, or otherwise provide for the construction and will supervise the construction as required by said plans. The State will secure the City's approval of construction plans prior to award of contract.
- B. The furnishing of the ornamental traffic signal poles will be part of the construction to be undertaken by the City, and the State will reimburse the City for its contribution to the Project, as prescribed under Article 3, "Compensation."

Article 3. COMPENSATION

- A. The maximum amount under this agreement without modification is **\$ 117,468**. A cost estimate of the ornamental signal poles furnished by the City under this agreement is marked "Exhibit A," attached hereto and made a part of this agreement.
- B. The State will reimburse the City the cost of furnishing the ornamental signal poles according to the location and manner of construction as shown and described in the plans and specifications.
- C. The State will reimburse the City for properly supported costs incurred under the terms and conditions of this agreement. Costs incurred prior to the issuance of a written "Work Order" by the State will not be reimbursed. Reimbursement will be made by the State to the City for applicable labor, equipment use, materials, supplies, travel expenses, and warehouse or material handling charges provided the City has paid from City funds their obligations covering items of costs previously billed.
- D. The City shall comply with the cost principles established in OMB Circular A-87, "Cost Principles for State and Local Governments."

Article 4. PAYMENTS

- A. The City shall submit the State's Form 132, Billing Statement, or other type of invoice acceptable to the State upon completion of the Project and the State's acceptance thereof.
- B. An original and four (4) copies of the Billing Statement should be submitted to the following address: P. O. Box 1386, Houston, Texas 77251-1386.
- C. All billing statements shall be properly documented, summarizing the costs and description of work performed, quantity of materials and devices, unit price, labor costs, and extensions.
- D. The State shall make payment to the City within thirty (30) days from receipt of the City's request for payment, provided that the request is properly prepared, executed, and documented.

- E. Unsupported charges or charges after final acceptance by the State will not be considered eligible for reimbursement. The State will prepare a final audit upon completion of the work authorized or at any time an audit is deemed to be in the best interest of the State.

Article 5. PERSONNEL, EQUIPMENT, AND MATERIAL

- A. The City will use applicable labor and supervisory personnel employed directly by the City, and use City-owned machinery, equipment, and vehicles necessary for the work. In the event that the City does not have the necessary machinery, equipment, and vehicles necessary to perform the work, the machinery, equipment, and vehicles may be rented or leased as necessary at the low bid price submitted by at least two approved bidders.
- B. Reimbursement for the use of materials purchased by other than competitive bid procedures will be made only if such procedures are shown to be in the public interest and provided the State shall have given prior approval for the use of said materials. All materials used for the work shall be new and undepreciated.

Article 6. INSPECTION OF WORK

- A. The State shall make suitable, frequent, and complete inspection of all materials and equipment, and the work of installation to determine and permit certification that the Project and its components meet all applicable requirements of the plans and specifications in suitable condition for operation and maintenance by the City after its completion.
- B. The City will provide opportunities, facilities, and representative samples, as may be required, to enable the State to carry on suitable, frequent, and complete inspection of all materials and application methods, sufficient to afford determination and certification by the State that all parts of the installation and the component materials comply with the requirements of the approved plans and specifications. The State will promptly notify the City of any failure of materials, equipment, or installation methods, and the City will take such measures as necessary to obtain acceptable systems components and installation procedures without delay.

Article 7. TERMINATION

This agreement may be terminated by one of the following conditions:

- (1) By mutual agreement and consent of both parties.
- (2) By the State giving written notice to the City as a consequence of failure by the City to satisfactorily perform the services and obligations set forth in this agreement, with proper allowances being made for circumstances beyond the control of the City.
- (3) By either party, upon thirty (30) days written notice to the other.

Article 8. INDEMNIFICATION

The City acknowledges that it is not an agent, servant, or employee of the State and thus, is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work defined in this agreement.

Article 9. REMEDIES

Violation or breach of contract terms by the City shall be grounds for termination of the agreement, and any increased cost arising from the City's default, breach of contract, or violation of terms shall be paid by the City. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 10. DISPUTES

Should disputes arise as to responsibilities and obligations as set forth in this agreement, the State's decision shall be final and binding.

Article 11. SUBLETTING

The City shall not sublet or transfer any portion of its responsibilities and obligations under this agreement unless specifically authorized in writing by the State. In the event subcontracts are entered into by the City, the subcontractors must adhere to the provisions of this agreement.

Article 12. AMENDMENTS

Changes in the time frame, character, responsibilities, or obligations authorized herein shall be enacted by written amendment. Any amendment to this agreement must be executed by both parties.

Article 13. SUCCESSORS AND ASSIGNS

The City shall not assign or otherwise transfer its rights or obligations under this agreement except with the prior written consent of the State.

Article 14. NOTICES

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City:	State:
The Honorable David G. Wallace	Gary K. Trietsch, P.E., District Engineer
Mayor, City of Sugar Land	Texas Department of Transportation
P.O. Box 110	P.O. Box 1386
Sugar Land, TX 77487-0110	Houston, Texas 77251-1386

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 15. INSPECTION OF CITY'S BOOKS AND RECORDS

- A. The State shall, for purpose of termination of the agreement prior to completion, examine the books and records of the City for the purpose of checking the amount of the work performed and/or materials furnished by the City at the time of contract termination. The City shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this contract and shall make such materials available to the State, Federal Highway Administration (FHWA) or its duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of final payment under this contract or until impending litigation is resolved. Additionally, the State, FHWA and its duly authorized representatives shall have access to all records of the City which are directly applicable to this contract for the purpose of making audits, examinations, excerpts, and transcriptions.

- B. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Article 16. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Article 17. GOVERNING LAWS AND VENUE

This agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations under this agreement must be filed in Travis County, Texas.

Article 18. PRIOR AGREEMENTS SUPERSEDED

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

Article 19. OMB A-128 AUDIT REQUIREMENTS

The City shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in paragraphs 6, 8, and 9 of OMB Circular No. A-128.

Article 20. PROCUREMENT STANDARDS

The City shall adhere to the procurement standards set forth in Title 49 CFR Part 18.32.

Article 21. PROPERTY MANAGEMENT STANDARDS

The City shall adhere to the property management standards set forth in Title 49 CFR Part 18.36.

Article 22. COMPLIANCE WITH LAWS

The City shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court, administration bodies, or tribunals in any matter affecting the performance of the agreement, including without limitation worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws, permits, and regulations. When required, the City shall furnish the State with satisfactory proof of compliance.

Article 23. CIVIL RIGHTS COMPLIANCE

The City shall comply with the regulations of the United States Department of Transportation as they relate to nondiscrimination (49 CFR 21 and 23 CFR 710.405 (B)); also Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor regulation (41 CFR 60).

Article 24. MINORITY BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

Contract No _____

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

Article 25. DEBARMENT CERTIFICATIONS (Applicable to agreements which exceed \$100,000)

The City is prohibited from making any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The City shall require any party to a subcontract or purchase order awarded under this contract as specified in Title 49 of the Code of Federal Regulation, Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

IN WITNESS WHEREOF, the State and the City have signed duplicate counterparts of the agreement.

THE CITY OF SUGAR LAND

Executed on behalf of the City by:

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

STATE OF TEXAS §

COUNTY OF FORT BEND §

I, _____, the duly appointed, qualified and acting
City Secretary of the City of Sugar Land, Texas, hereby certify that the foregoing
pages constitute a true and correct copy of an ordinance/resolution duly passed
by the City Council at a meeting held

on _____, 20____, A.D. at _____ o'clock __M

To certify which, witness my hand and seal of the City of Sugar Land, Texas, this
day of _____, 20____, at _____, Texas.

City Secretary of Sugar Land, Texas

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE APPROVAL OF THE AGREEMENT DATED _____ BETWEEN THE STATE OF TEXAS AND THE CITY OF SUGAR LAND, FOR THE INSTALLATION, CONSTRUCTION, EXISTENCE, USE, OPERATION AND MAINTENANCE OF HIGHWAY TRAFFIC SIGNALS/LIGHTING AT THE LOCATION(S) SHOWN ON EXHIBIT 1, ATTACHED HERETO AND MADE A PART HEREOF, IN THE CITY OF SUGAR LAND; PROVIDING FOR THE EXECUTION OF SAID AGREEMENT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND;

Section 1.

That the certain agreement dated _____ between the State of Texas and the City of Sugar Land, for the installation, construction, existence, use, operation and maintenance of certain highway traffic signals/lighting at the location(s) shown on Exhibit 1, attached hereto and made a part hereof, in the City of Sugar Land, be and the same is hereby approved, and the _____ is hereby authorized to execute said agreement on behalf of the City of Sugar Land, and to transmit the same to the State of Texas for appropriate action.

Section 2.

The fact that the improvements contemplated under the above mentioned agreement are needed, creates an emergency for which the immediate preservation of the public peace, health, safety, and general welfare requires that this Ordinance take effect immediately from and after its passage, and it is accordingly so ordained.

PASSED: _____

APPROVED: _____

Mayor

ATTEST:

City Secretary/Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1

US 59 at SH 99